

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2004-000879-001 DT

02/28/2005

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT
P. M. Espinoza
Deputy

FILED: _____

STEPHEN FAVORITO

MARC J VICTOR

v.

LESTER PEARCE (001)
STATE OF ARIZONA (001)
ANDREW P THOMAS (001)

LESTER PEARCE
WEST MESA JUSTICE COURT
1837 S. MESA DRIVE B-103
MESA AZ 85210-6219
DOUGLAS W JANN

MESA JUSTICE CT-WEST

ORAL ARGUMENT / RULING

This is the time set for Oral Argument re: Petition for Special Action. Petitioner is not present but is represented by counsel, Marc Victor. Respondents are represented by counsel, Douglas Jann.

Court reporter is not present.

The Court has read the Petition and pleadings submitted by counsel.

Argument is presented to the Court.

IT IS ORDERED taking this matter under advisement.

Matter concludes.

LATER...

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This court has jurisdiction over special actions and proceedings such as this, pursuant to the Arizona Constitution Article VI, Section 18, and the Arizona Rules of Procedure for Special Actions.

The Petitioner has sought relief from the Respondent Judge's order denying his request for Notice of Change of Judge (a "peremptory change of judge") pursuant to Rule 10.2, Arizona Rules of Criminal Procedure. Petitioner Favorito has no equally plain, speedy, or adequate remedy by appeal from the Respondent Judge's order denying his peremptory notice for change of judge, so special action review by this court is appropriate.¹

The primary issue appears to be the timeliness of Petitioner's filing of the Rule 10.2 notice. This notice was filed well after the case had commenced: it was filed after Petitioner's attorney received a notice of trial setting, even though he had participated in a pretrial conference, or status conference with the Respondent Judge. Rule 10.2(c), Arizona Rules of Criminal Procedure, requires that a notice of peremptory change of judge be filed within ten days after arraignment, if the case is assigned to a judge, or after "actual notice to the requesting party of the assignment of the case to a judge."²

Counsel for the Petitioner asserts that the notice was filed the day he received notice of the assignment of this case to Judge Pearce, but he received a trial setting notice with Judge Pearce's name on it. That the notice would have Judge Pearce's name on it is not surprising, as Judge Pearce is the elected Justice of the Peace for the North Mesa Precinct and is the only elected judge or appointed judge serving on that bench. Certainly, various temporary judges pro tem will fill in or assist Judge Pearce with his calendar, but in the absence of a specific assignment to a judge pro tem, counsel practicing in the North Mesa Justice Court must be charged with the knowledge that their case will be heard by the judge of that court, from the date of a case's filing within that court.

Therefore, the deadline time in this case for the filing of a peremptory Notice of Change of Judge runs from the date of arraignment, as this Court will presume that the Petitioner received notice of the assignment of the only permanent judge within that court, from the commencement of the case.

IT IS THEREFORE ORDERED accepting jurisdiction, but denying the relief requested by the Petitioner.

¹ *Medders v. Conlogue*, 208 Ariz. 75, 90 P.3d1241 (App. 2004); *Bergeron ex rel. Perez v. O'Neil*, 205 Ariz. 640, 74 P.3d 952 (App. 2003).

² Rule 10.2(c)(1) and (3), Arizona Rules of Criminal Procedure.